

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Digital River, Inc.

Civil File No.: \_\_\_\_\_

Plaintiff,

v.

**COMPLAINT**

Arcsoft, Inc.

Defendant.

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Plaintiff Digital River, Inc. ("Digital River"), for its Complaint against Defendant Arcsoft, Inc. ("Arcsoft"), states as follows:

**PARTIES**

1. Digital River is a leading provider of global e-commerce solutions that builds and manages online businesses for software and game publishers, consumer electronics manufacturers, distributors, online retailers and affiliates. Its multi-channel e-commerce solution, which supports both direct and indirect sales, is designed to help companies of all sizes maximize online revenues as well as reduce the costs and risks of running an e-commerce operation. Digital River is a Minnesota corporation with its principal place of business located at 10380 Bren Road West, Minnetonka, Minnesota 55343.

2. On information and belief, Arcsoft is a software developer of multimedia imaging technologies and applications for smart phones, feature phones, tablets, PCs, smart TVs, and cameras. On information and belief, Arcsoft is a California corporation

with its principal place of business located at 46601 Fremont Boulevard, Fremont, California 94538.

**JURISDICTION AND VENUE**

3. This is an action for breach of a Hosted Reseller Agreement between the parties. The amount in controversy exceeds \$75,000, exclusive of interest and costs. The Court has jurisdiction under 28 U.S.C. § 1332. Venue is proper under 28 U.S.C. § 1391(a) and the exclusive venue provision in the Hosted Reseller Agreement.

**THE HOSTED RESELLER AGREEMENT**

4. On or about April 14, 2011, Arcsoft entered into a Hosted Reseller Agreement with Digital River and Digital River Ireland Limited. The Hosted Reseller Agreement incorporated Digital River's General Terms & Conditions (collectively, "the Agreement").

5. The "Initial Term" of the Agreement commenced on April 14, 2011 and continued until the two year anniversary of the "Commerce Live Date"—the date on which Arcsoft's products are first made generally available for sale through Digital River's commerce solution (the "Initial Term").

6. Pursuant to the Agreement, Digital River agreed to resell Arcsoft's products on the internet through an e-commerce solution created, owned, hosted, and maintained by Digital River on Digital River's "Commerce Express" platform.

7. Pursuant to Section 3.3 of the General Terms & Conditions, Arcsoft agreed to provide Digital River with any information, items and materials reasonably required by

Digital River to enable it to implement and administer the e-commerce solution and to resell or distribute Arcsoft's products.

8. In exchange for these services, Arcsoft agreed to pay Digital River pursuant to a compensation formula applied to all products sold. In Section A(2) of the Hosted Reseller Agreement, Arcsoft agreed that for each calendar month during the Initial Term, Arcsoft would pay Digital River at least the monthly minimum of \$7,500 per month.

9. Pursuant to Section 6.4 of the General Terms & Conditions, Arcsoft agreed that it would be liable for all collection expenses incurred by Digital River for delinquent amounts owed to Digital River, including without limitation reasonable attorneys' fees.

#### **ARCSOFT BREACHED ITS OBLIGATIONS UNDER THE AGREEMENT**

10. After the parties entered into the Agreement, Digital River undertook construction of an e-commerce solution for Arcsoft.

11. At all times, Digital River complied with its contractual obligations under the Agreement and was dedicated and willing to launch the Arcsoft e-commerce solution.

12. Notwithstanding Digital River's performance under the Agreement, Arcsoft unilaterally announced in August of 2011, that it did not intend to support the project and was cancelling the Agreement.

13. Section 8 of the General Terms & Conditions, which addresses the term and termination of the Agreement, did not give Arcsoft with the right to terminate the Agreement prior to the end of the Initial Term.

14. On or about October 20, 2011, Digital River provided written notice to Arcsoft that it was in material breach of the Agreement. Pursuant to Section 8.2 of the General Terms & Conditions, Digital River provided Arcsoft with thirty calendar days to cure its breach.

15. Arcsoft failed to cure its breach of the Agreement.

16. Accordingly, on or about December 2, 2011, Digital River provided Arcsoft with written notice of termination of the Agreement.

**COUNT I**  
**(Breach of Contract)**

17. Digital River realleges its previous allegations.

18. The Agreement entered into by Arcsoft is a valid and binding contract.

19. Digital River complied at all times with its contractual obligations under the Agreement.

20. Arcsoft's refusal to substantially perform its obligations under the Agreement and its improper attempt to cancel the Agreement constitutes a breach of the Agreement.

21. Arcsoft failed to cure its breach of the Agreement within the thirty-day cure period provided by Digital River and the Agreement.

22. As a direct result of Arcsoft's breach, Digital River has been damaged in an amount in excess of \$75,000, to be determined at trial. Digital River's damages include the contractually agreed-upon monthly minimum payments owed to Digital River of

\$7,500 per month during the Initial Term. Under Section 6.4 of the General Terms & Conditions, Digital River is also entitled to its legal fees and costs.

**JURY DEMAND**

23. Digital River demands a jury trial on all issues triable to a jury.

**WHEREFORE**, Digital River demands judgment against Arcsoft as follows:

1. Awarding Digital River judgment in an amount in excess of \$75,000, which amount shall be determined at trial;
2. Awarding Digital River prejudgment interest;
3. Awarding Digital River its costs and attorneys' fees incurred herein; and
4. Granting such further relief as the Court deems just and equitable.

December 16, 2011

s/ Timothy M. O'Shea

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